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PPM-003-2001

SUBJECT: USUHS Alternative Dispute Resolution (ADR)

References: *See Enclosure 1*

A. Purpose

This President's Policy Memorandum (PPM) provides policy and procedures regarding the use of ADR procedures when practicable in connection with certain matters pertaining to the Uniformed Services University of the Health Sciences (USUHS).

B. Applicability

1. This PPM, applies to disputes involving contracts or grievances to which USUHS is a party; appeals from the withholding of documents requested under the Freedom of Information Act; complaints of discrimination; and, administrative grievances when the USUHS General Counsel (or designee) determines that use of ADR would be practicable. Furthermore, ADR procedures may be used with respect to any other disputes or controversies involving USUHS activities or personnel if the USUHS General Counsel (or designee) determines that use of ADR would be practicable and beneficial.

2. This PPM does not effect actions taken in accordance with the Uniform Code of Military Justice or other disciplinary or administrative actions taken pursuant to other law or regulation.

3. This PPM does not create, and may not be construed by any third-party as creating, any substantive rights to, or any obligation by USUHS to use ADR procedures. The decision regarding which ADR procedures to use, if any, rests solely within the discretion of the USUHS President, after consultation with the USUHS General Counsel.

C. Definitions. *See Enclosure 2*

D. Policy

1. It is USUHS policy:

a. To recognize that civil litigation is costly and time-consuming to all parties involved and that the use of ADR procedures in the early stages of appropriate cases may result in significant savings of time and money to all concerned, as well as furthering good relations with disputants.

b. To make maximum use of ADR procedures when use of such procedures would be practicable and beneficial to all parties involved.

2. The USUHS General Counsel (or designee) is hereby designated as the ADR Specialist for USUHS, and as such will review contract disputes, FOIA appeals, discrimination claims, and administrative grievances as well as any other civil court cases, administrative actions and other disputes and controversies involving USUHS personnel or actions, to determine if the use of ADR procedures could either reduce the costs to the parties associated with resolving the matter or shorten the time necessary to resolve the matter, or would otherwise be beneficial to those involved.

3. If ADR is appropriate in a particular case, the General Counsel (or his designee) will be responsible for selecting the type of ADR to be used, for selecting any third-party neutrals to be used, and for overseeing the implementation of the ADR procedure to be used.

E. Procedures

1. All personnel employed by, assigned, or attached to USUHS who receive notice of a dispute with USUHS involving either a contract with which USUHS is a party, the withholding of information pursuant to the Freedom of Information Act, an allegation of discrimination or an administrative grievance shall immediately notify the USUHS General Counsel.

2. The USUHS General Counsel (or designee) will attempt to develop facts sufficient to allow a decision to be made as to whether it would be beneficial or practicable to attempt to resolve the dispute in question using ADR procedures. The General Counsel (or designee) will also determine which ADR procedure would be best suited to resolving the dispute in question. The possible choices from which the USUHS General Counsel may select include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, non-binding arbitration or any combination thereof. Definitions of these procedures are found at Enclosure 2. The USUHS General Counsel (or designee) shall determine which, if any, third party neutrals or other appropriate parties should be used in the course of the ADR process. The USUHS General Counsel (or designee) shall also determine, on a case-by-case basis, which, if any, conditions or protections, including, but not limited to, confidentiality agreements, are necessary to protect the interests of the parties involved. In making the necessary determinations called for by this Instruction, the USUHS General Counsel (or designee) may consult with and use the resources of the DOD ADR Coordinating Committee or other federal agencies.

F. Responsibilities

1. All department heads are responsible for ensuring that the USUHS General Counsel (or designee) is promptly informed of any dispute after notice of such dispute has been provided to USUHS.

2. The USUHS General Counsel (or designee) is responsible for the overall operation and supervision of the ADR program created by this Policy Memorandum. Such responsibilities include

the following:

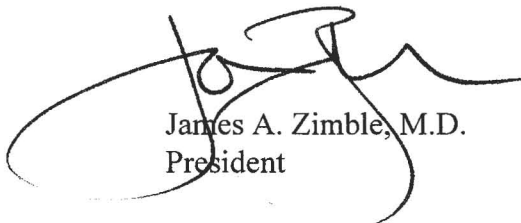
a. Determining, on a case-by-case basis, which, if any, disputes are appropriate for possible resolution using ADR procedures;

b. Determining which type of ADR procedure will be used in a particular case, to include selecting which, if any, third party neutrals will be used.

3. All personnel employed by or assigned or attached to USUHS shall cooperate fully with the USUHS General Counsel (or designee) and any third party neutrals at every stage of the ADR process.

G. Effective Date

This PPM shall be effective immediately.



James A. Zimble, M.D.
President

Enclosure 1

REFERENCE

- (a) DoD Directive 5145.5, "Alternative Dispute Resolution," April 22, 1996.

DEFINITIONS

Mediation involves the use of a trained neutral third party to help disputants negotiate a mutually agreeable settlement.

Early neutral evaluation involves using a neutral fact finder, often one with substantive expertise, to evaluate the relative merits of the parties' cases. This process, which can be used early on in a dispute, usually involves an informal presentation to the neutral of the highlights of the parties' cases or positions. The neutral provides a nonbinding evaluation, sometimes in writing, which can give parties a more objective perspective on the strengths and weaknesses of their cases, thereby making further negotiations more likely to be productive.

A **minitrial** is a structured settlement process in which the disputants agree on a procedure for presenting their cases in highly abbreviated versions (usually no more than a few hours or a few days) to the senior officials for each side with the authority to settle the dispute. This process allows those in senior positions to see first hand how their case and that of other parties play out, and can serve as a basis for more fruitful negotiations. Often, a neutral presides over the hearing, and may subsequently mediate the dispute or help parties evaluate their cases. The procedures for minitrials are developed by agreement among the parties.

A **settlement judge** serves essentially as a mediator or neutral evaluator in cases pending before a tribunal. The settlement judge is usually a second judge from the same body as the judge who will ultimately make the decision if the case is not resolved by the parties. In some cases, a settlement judge may give an informal advisory opinion.

Common to most of the processes discussed above is the use of a **neutral third party**. USUHS anticipates that most of the time a neutral is used to resolve a dispute with an outside party, the neutral will not be an employee of USUHS. Neutrals are available from other federal agencies, court systems, and private companies. In all cases, the particular neutral will be approved by all parties to the dispute.